

STATE OF MICHIGAN
COURT OF APPEALS

UNPUBLISHED

June 11, 2013

In the Matter of A. SCHIFFER, Minor.

No. 313748

Kent Circuit Court

Family Division

LC No. 11-052576-NA

Before: MURPHY, C.J., and FITZGERALD and HOEKSTRA, JJ.

PER CURIAM.

Respondent-mother appeals as of right the trial court's order terminating her parental rights to the minor child under MCL 712A.19b(3)(c)(i) (conditions of adjudication continue to exist), MCL 712A.19b(3)(g) (failure to provide proper care and custody), and MCL 712A.19b(3)(j) (reasonable likelihood that the child will be harmed if returned to parent's home). Because we conclude that the trial court did not clearly err by finding that at least one statutory ground for termination was proved by clear and convincing evidence, we affirm.

The Department of Human Services (DHS) petitioned for removal of the minor child in August 2011 because of respondent's poor home conditions, emotional instability (mental health), parenting skills, and lack of medical care for the minor child. With respect to parenting skills, respondent failed to supervise the child, resulting in the 2-1/2 year-old child wandering out of a public library by himself, crossing the street, and walking through several drive-through lanes at a bank. On another occasion the minor child was discovered putting nails in his mouth at respondent's home and respondent had to be prompted a number of times to remove the nails from the child's reach. Respondent's service plan identified several areas of concern including emotional stability (mental health), domestic relations, parenting skills, housing, employment, and communication skills. Several services were provided to respondent with regard to these areas of concern, including individual therapy, group therapy, parenting classes, psychiatric visits, and referrals to employment and domestic violence services. Despite her compliance with several aspects of the service plan, respondent remained unable to internalize or implement behavioral changes. She continued to be unable to manage the child's behavior during visits and continued to engage in relationships with inappropriate men. Respondent also remained unemployed and refused domestic relations services. Accordingly, DHS petitioned for termination of respondent's parental rights. The trial court held a hearing and terminated respondent's parental rights in November 2012. Respondent now appeals.

To terminate parental rights, the trial court must find that the petitioner has proven at least one of the statutory grounds for termination by clear and convincing evidence. MCL 712A.19b(3); MCR 3.977(H)(3)(a); *In re Sours Minors*, 459 Mich 624, 632; 593 NW2d 520 (1999). We review for clear error a trial court's decision terminating parental rights. MCR 3.977(K); *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000); *In re Sours Minors*, 459 Mich at 633. A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003).

In this case, respondent's parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j), which provide in pertinent part:

(3) The court may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence, 1 or more of the following:

* * *

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

On appeal, respondent first argues that petitioner failed to prove MCL 712A.19b(3)(c)(i) and MCL 712A.19b(3)(j) by clear and convincing evidence; however, respondent makes no argument with regard to MCL 712A.19b(3)(g).¹ Accordingly, we presume that the trial court did not clearly err by finding that the unchallenged statutory ground was established by clear and

¹ We further note that respondent does not appeal the trial court's determination that termination of her parental rights was in the child's best interests.

convincing evidence. *In re JS & SM*, 231 Mich App 92, 98-99; 585 NW2d 326 (1998), overruled in part on other grounds *In re Trejo Minors*, 462 Mich at 353. Given the conclusion that there were statutory grounds for termination under MCL 712A.19b(3)(g), it is unnecessary to address the other grounds for termination because the petitioner need only establish one ground. *In re Trejo Minors*, 462 Mich at 360. Nevertheless, we have reviewed those grounds and conclude that there was no clear error in the trial court's finding that the statutory grounds set forth in MCL 712A.19b(3)(c)(i) and (j) were proved by clear and convincing evidence.

Regarding MCL 712A.19b(3)(c)(i), the record supports the conclusion that the conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age. The testimony and record evidence demonstrated that respondent was unable to change her behavior despite participation in some services. Respondent continued to be unable to manage the child's behavior during visits, continued to engage in relationships with inappropriate men, and remained unemployed. Accordingly, there was sufficient evidence to support the conclusion that MCL 712A.19b(3)(c)(i) was proved by clear and convincing evidence. See *In re Frey*, 297 Mich App 242, 248; 824 NW2d 569 (2012) (finding that where respondents failed to demonstrate sufficient compliance with or benefit from those services specifically targeted to address the primary basis for the adjudication, the trial court did not clearly err by terminating parental rights). For the same reasons, there was sufficient evidence to support the conclusion that MCL 712A.19b(3)(j) was proved by clear and convincing evidence. There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent because respondent has demonstrated an inability to change her behavior.

Respondent also argues that DHS provided insufficient mental health services. Respondent did not timely raise a challenge to the nature of the services offered and, therefore, this issue is unpreserved. *In re Terry*, 240 Mich App 14, 26-27; 610 NW2d 563 (2000). Accordingly, we review this issue for plain error affecting respondent's substantial rights. *In re Williams*, 286 Mich App 253, 274; 779 NW2d 286 (2009).

In this case the record demonstrates that respondent did not take advantage of all of the mental health services offered to her. She missed some of her individual counseling appointments and refused domestic violence therapy. Thus, "[w]hile the DHS has a responsibility to expend reasonable efforts to provide services to secure reunification, there exists a commensurate responsibility on the part of respondents to participate in the services that are offered." *In re Frey*, 297 Mich App at 248. Moreover, while her therapist reported making some progress during their sessions, there was no change in respondent's behavior outside of therapy. Accordingly, the record does not support respondent's argument that she would have fared better if additional services were offered. *In re Fried*, 266 Mich App 535, 543; 702 NW2d 192 (2005) (finding no relief was warranted where the record did not suggest that the respondent would have fared better with additional services). Therefore, we conclude that respondent has not demonstrated plain error.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra